MODEL CODE & MANUAL

Agenda

Introduction

Purpose is to Introduce the New Model Code & Manual

History

Authority and Approvals so far

Implementation Plan

Highlights of the Code

Highlights of the Manual

Conclusion

THE NEED

The increased operational tempo for the National Guard, whether OCONUS in Iraq and Afghanistan, or CONUS for Katrina level disaster relief or border security deployments, makes it easily foreseeable that because of the sheer numbers of members deployed there will be an increase in disciplinary and criminal matters

THE NEED

- The model State Code and Manual provide TAGs with the ability to exert adequate authority over their deployed members so that they can request jurisdiction from local authorities.
  - For example, currently, if an Iowa member while deployed to Arizona on a border security mission in state status committed a misdemeanor the local District Attorney would be unlikely to waive jurisdiction to the Guard because the Iowa Guard has insufficient punishment authority.
- If the model State Code and Manual is adopted the Iowa TAG would be in a much better position to request jurisdiction.

THE NEED

- The comparable offenses and punishments between the federal UCMJ and the model state code will provide greater predictability for members as they switch statuses.
- This will also reduce objections by the active duty to the guard picking up operational missions.
  - To comply with the Law of Armed Conflict forces must be disciplined forces. Some state codes are so weak it could be argued that when in title 32 status the state cannot field a disciplined force within the meaning of the Geneva Conventions.
  - Adoption of the model State Code would provide these states with an uncontrovertibly disciplined force and the state would then be in a better position to compete for new operational missions.

HISTORY

1961 Uniform Commissioners

1962 No Guard input 23 States adopt

1963-1968 UCMJ Revised

1964-1978 Draft federalized code

1982 NGB JA survey

1998 Military Justice Panel

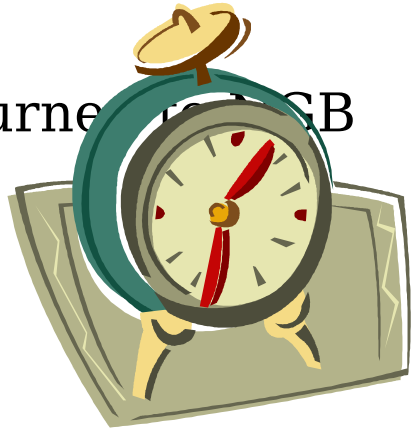
2003 Model Code

HISTORY

- 32 U.S.C. Amendments
- Section 512 punishment caps repealed
- Section 327 Presidential authority
- SecDef prepare a Model State Code and Manual
  – consistent with 1998 Military Justice Panel

HISTORY

15 July 03	Draft Model Code of Military Justice completed
19 Sep 03	Draft Manual for Courts-Martial completed
29 Sep 03	Working group incorporated GO guidance
29 Sep 03	Revisions-CNGB input/signature
13 Oct 03	Report to DoD GC
Jan-Jun 04	reviewed by Army & AF JA & DOD GC
Jul 04	Comments incorporated
13 Dec 03	Report to Congress
Mar 05	Approved By DOD and Returned to CNGB
Fall 06	Approval to Present to the Field



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

MAR 2 5 2005

MEMORANDUM FOR CHIEF, NATIONAL GUARD BUREAU

SUBJECT: Model State Code, Manual for Courts-Martial and Implementation Plan

References: (a) Section 574, National Defense Authorization Act for Fiscal Year 1997
(b) Section 512, Bob Stump National Defense Authorization Act for Fiscal Year 2003
(c) Memorandum of the Acting General Counsel of the Department of Defense, dated December 27, 2002
(d) Memorandum of the Chief Counsel, National Guard Bureau, dated August 20, 2004

The model State Code of Military Justice and Manual for Courts-Martial developed by the National Guard Bureau's Working Group have been reviewed. Combined, both models provide a comprehensive approach toward increasing uniformity among the States for courts-martial and non-judicial punishment proceedings for the National Guard When Not in Federal Service. Together, these models satisfy the Congressional requirements, references (a) and (b), and as I requested pursuant to the Secretary of Defense's delegated authority, reference (c).

The proposed implementation plan outlined in your letter, reference (d), and paragraph 9 in particular, should provide an effective means to engage appropriate State officials for support and State legislation, as necessary. Introductory briefings and explanations to the various State and National councils and associations listed in your letter will also serve to "spread the word" and should help garner the support needed.

In accordance with reference (b), the model State Code of Military Justice and Manual for Courts-Martial, along with a summary of the proposed implementation plan, will be forwarded to the President of the Senate and the Chairmen and Ranking Members of the Senate and House Armed Services Committees.

Daniel J. Dell'Orto
Principal Deputy General Counsel

NGB

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MAR 25 2005

The Honorable Richard B. Cheney
President of the Senate
United States Senate
Washington, D.C. 20510-6250

Dear Mr. President:

On behalf of the Secretary of Defense, I am pleased to forward copies of the Department's model State Code of Military Justice and model State Manual for Courts-Martial for the National Guard When Not In Federal Service. The National Guard Bureau was tasked to develop these documents in response to a Congressional request in the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

The concept for a model State Code and State Manual was recommended by a Department of Defense Panel to Study Military Justice in the National Guard When Not in Federal Service. The intended purpose of developing the model State Code and model State Manual was to provide them to the States, Territories, Puerto Rico and the District of Columbia (hereafter collectively referred to as "the States") for their consideration and potential adoption. The Department of Defense Panel found that the States' legal and administrative authorities to conduct courts-martial and non-judicial punishment varied greatly. In addition, the Panel found that a number of National Guard jurisdictions lacked modern and effective laws and procedures necessary to have a viable military justice system. The creation of a model State Code and model State Manual was seen as a way to enhance uniformity among the States. In addition, it was believed that the project should result in increased comparability of the State's military justice systems with that applicable to active duty military members. In large measure, both closely follow the organization and provisions of the Federal Uniform Code of Military Justice and Manual for Courts-Martial.

The National Guard Bureau established a working group of national guard judge advocates and senior advisors to develop these documents. The Judge Advocates General of the Departments of the Army and Air Force appointed military justice experts as advisors and consultants to the working group. If adopted by the States, among the benefits would be: (1) uniformity; (2) enhanced military discipline; (3) closer conformity with the Federal Uniform Code of Military Justice; (4) strengthened military justice training; (5) elimination of inter-state jurisdictional issues; (6) a useful commander's tool to further mission accomplishment; (6) a step forward in the National Guard's vision of being Ready, Reliable, and Relevant; and (7) increased credibility with the active duty components and public.

The proposed implementation plan is multi-faceted. Because the process to achieve the States' adoption will invariably be lengthy, familiarity and support for these models is needed in key national and state organizations. These organizations include the Commissioners on

Uniform State Laws, the National Governor's Association, the National Center for State Courts, the National Sheriff's Association, the Adjutant General Associations, the Attorney General Associations, and the National Counsel of State Legislatures. However, the National Guard Bureau believes that successful implementation primarily rests on the shoulders of the Adjutants General of the States and Territories, as they are in the best position to demonstrate the value of the proposals to the Governors, State Attorneys General, and State legislators. Army and Air Force National Guard senior judge advocates, working with their active duty counterparts, would be able to provide the additional expertise necessary. In addition, key members of the National Guard Bureau's working group would be made available to provide testimony, briefings, and presentations to the Congress and State legislatures, as appropriate.

The Department of Defense supports the adoption of the model State Code, the model State Manual, and the implementation plan that the National Guard Bureau has provided. This office is available to assist wherever needed.

Sincerely,

Daniel J. Dell'Orto
Principal Deputy General Counsel

HIGHLIGHTS

- **Follows Federal UCMJ & MCM format and numbering**
- **Provides for familiarity, ease of use & credibility with AD and other State forces.**
- **MCM is a JA resource, not a CC tool**
- **MCM doesn’t duplicate Federal MCM; supplements with state version differences**
- **Allows states to supplement if unique state processes necessary**
- **Incorporates UCMJ & MCM wherever possible**

HIGHLIGHTS

- **Points to UCMJ & MCM as seminal body of law and resource for military justice**
- **Model Code is sensitive to State Sovereignty; recognizes some inherent state v. federal constitutional issues.**
- **Jurisdiction over person is 24/7**
- **For Military crimes applies at all times regardless of status/similar to UCMJ**
- **For Non-Military crimes applies if nexus exists**
- **Establishes a priority of prosecution.**
- **Extra territorial application analogous to MEJA**
- **Extinguishes current jurisdictional gaps.**
  - **Example: Title 32 member in another state commits Title 10 crime. Can be prosecuted in home state for T10 crime in a T32 status**

NON-JUDICIAL PUNISHMENT

- **A hybrid Air & Army Guard approach based on federal UCMJ**
- **Designed to be heavy hammer for CC (currently lacking in most states)**
- **Commander does initial determination of punishment options based on inquiry**
- **If no restraint of freedom contemplated, CC utilizes summarized version**
    - **No right to counsel**
    - **No right to turn down in lieu of court martial**
- **If a restraint of freedom is contemplated, CC utilizes formal version**
    - **Right to counsel**
    - **Right to turn down for court martial.**

COURT MARTIAL JURISDICTION AND CONVENING AUTHORITY

- **Order of Convening Authority is Governor, TAG and Commanding Officer(s)**
- **The only DOD GC comment that was not incorporated was on this issue**
- **Although Article 22a of the Model Code presents a perceived conflict with 32 USC 327 re:**
  - **Presidential authority to convene, recommend read in conjunction with federal law. Leave this point alone for present time. Cannot have State pass law on Presidential authority.**

STATUTE OF LIMITATIONS

- **Federal is 5 years for crimes and 2 years for NJP**
- **State proposes three years for both.**

SENTENCES

- **Use UCMJ Table of Punishments except:**
  - **Maximum 10 years Confinement**
  - **No Death Penalty**

APPEALS

- **No automatic Appeal**
- **Permissive Appeal**
- **Use State Appellate Court Procedures.**

RIGHT TO COUNSEL

- **Model Code provides for right to counsel in all case as UCMJ except for:**
  - **Expedited/Non Restrain NJP**
  - **On Appeal**
    - **Art 70 and Para 9-9 of the Model Manual**
    - **May request senior force judge advocate appoint**
    - **May use civilian counsel at member's expense**

MISCELLANEOUS ISSUES

- **Cross Component Utilization of Judge Advocates and Military Judges**
- **Model Code Provides for Enabling language as well as Fiscal authority language**
- **Passage of the Model Code will:**
  - **Requires some rewriting of Services' Regulations and Instructions**
  - **Facilitate Blended/Integrated AF test Wings & Organizations**

IMPLEMENTATION

- Bottom Up Strategy
  - We need you
- Briefings at conferences
  - All Hands Meeting
  - Annual Survey of the Law
  - Commanders Development Course
  - Contemporary Base Issues Course
  - ANG Law Office Course
- Generate JAG support

IMPLEMENTATION

The TAGs are key!

- Trying to brief at AG winter meeting
  - Agenda is pretty full
- TAGs coordinate with governor’s office
- TAGs coordinate with state’s attorney
- TAGs submit to legislation

IMPLEMENTATION

Would like to develop a working group team:

- Briefings at conferences
- Available to assist and brief at state legislatures
- Funding

IMPLEMENTATION

Needed Coordination

- Commissioners on Uniform State Laws
- National Council of State Legislatures
- National Governors Association
- National Center for State Courts
- National Sheriff’s Association
- Adjutant General Associations
- Attorney General Associations

Conclusion

I Need Your Help
To Get The
Message To The
TAGs

Questions?

… Offering uniquely American solutions to the complex security challenges our nation faces both at home and abroad